

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE  
RECORD REQUESTS FROM THE D. T. E.  
D.T.E. 02-73

Date: December 18, 2002

Witness Responsible: Vincent Rea  
Respondent: Counsel

DTE-RR-2: Provide a revised version of the draft promissory note based on Mr. Rea's testimony.

RESPONSE: Please see attached draft promissory note, which has been revised, based on Mr. Rea's testimony after consultation with counsel. Certain provisions of the draft promissory note will not be able to be finalized before the Department rules on the Company's petition, and the note is issued (e.g., issue date, term and interest rate of the promissory note). Such provisions have been highlighted and bracketed in the attached draft. As noted in paragraph 9 of the Company's petition (BSG Exhibit 1), the Company will file with the Department a copy of the fully executed promissory note pursuant to M.G.L. c. 164, § 85A.

Addressed below, and as appropriate, in the attached revised promissory note, are issues regarding the promissory note which were raised during Mr. Rea's testimony.

- ⌘ The language of the fourth paragraph of the note, which reads: "Presentment, protest and notice of nonpayment and protest are hereby waived by Borrower". Such language is typical in promissory notes and directly related to the collectibility and enforceability of the note. (Tr. pgs. 103, 104).
- ⌘ The lack of a "cure provision" in the event of default. (Tr. Pg. 104)  
The Company proposes to address this matter by adding a provision to the draft note, which provides for a five business day grace period. (See third paragraph of the revised draft promissory note for inclusion of grace period provision.)
- ⌘ In the event of a default, would the Company be required to pay a default interest rate? (Tr. Pgs. 106, 107). Language in the first paragraph of the note, which assigns an interest rate until the note is paid in full, is consistent with my testimony that there is no default interest rate applicable to the promissory note (Tr. Pgs. 106 - 108).
- ⌘ Choice of law provision. It is typical for the lender under a promissory note to choose the law applicable to the note. As the lender is an Indiana corporation and payments will be due in Indiana, the choice of Indiana law is appropriate and reasonable. Last year, the Department approved agreements between Bay State and a NiSource affiliates where the governing law was the law of the State of Indiana. (See D.T.E. 01-75 (2001), approving Bay State's participation in the NiSource, Inc. System Money Pool).